IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 27TH SEPTEMBER 2006 / 5TH ASWINA 1928

OP.No. 18798 of 2002(K)

PETITIONER:

KUSUMAM N. KUTTY, PROPRIETRIX,
M/S. CITY GAS AGENCIES,
CHITTOOR ROAD, ERNAKULAM.

BY ADV. SRI.V.P.SUKUMAR

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB)
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.

2. THE DEUTY COMMISSIONER OF
COMMERCIAL TAXES, ERNAKULAM.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

4. THE DEPUTY TAHSILDAR (R.R),
KANAYANNUR TALUK, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO32098/2002 IN O.P. NO.18798/2002

DISMISSED:

27.9.2006 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE PENALTY NOTICE DT.15.5.2001 ISSUED TO THE PETITIONER BY R1.

P2: TRUE COPY OF THE REPLY DT.24.5.2001 SUBMITTED BY PETITIONER BEFORE R1.

P3: TRUE COPY OF THE PENALTY ORDER DT.7.7.2001 PASSED BY R1.

P4: TRUE COPY OF RR NOTICE DT.8.10.2001 ISSUED TO PETITIONER BY R4.

P5: TRUE COPY OF ORDER DT.27.3.02 PASSED BY R2.

P6: TRUE COPY OF THE APPLICATION FOR REVISION DT.16.4.2002 SUBMITTED BY PETITIONER BEFORE R3.

P7: TRUE COPY OF THE ORDER DT.7.5.02 PASSED BY R3.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.18798 of 2002

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Dated this the 27th day of September, 2006.

JUDGMENT

The petitioner is challenging Ext.P7 order whereunder the Commissioner of Commercial Taxes dismissed second revision filed against penalty order issued under Section 45A of the KGST Act and modified in first revision by the Deputy Commissioner of Sales Tax. On going through Ext.P7 I find it is a detailed order whereunder the Commissioner has considered petitioner's contentions. The contention of the petitioner is that non-payment of tax on taxable turnover happens to be on account of misclassification. According to the petitioner, petitioner maintained combined account of taxable and non-taxable sales. I do not think the petitioner's contention is tenable because the facts on record go to establish that the petitioner was deliberately avoiding payment of tax on taxable sales. The petitioner admittedly is a dealer in LPG and is licenced by a public sector oil company. The local sales of locally purchased LPG are not taxable at the hands of the petitioner as such sales are second sales. However, it is seen that petitioner had substantial interstate purchases from outside State. It is also on record that the company supplied at lower cost to meet the tax liability at first sale point in the State. However, after paying sales tax on the first sales i.e. on taxable turnover for first two months of the year, the petitioner discontinued payment of tax obviously for no valid reason. However, petitioner estimated the tax after notice was issued.

It is seen from Ext.P7 order that petitioner has maintained even separate accounts for supplies received within the State and from outside State. Therefore, it is intrinsically established from the conduct of the petitioner that petitioner deliberately evaded payment of tax for sales made from June onwards of the year. Therefore, evasion of tax is rightly confirmed by the Commissioner and consequently penalty is sustained. So far as quantum of penalty is concerned, as against maximum penalty of two times, the Deputy Commissioner has reduced penalty to equal amount of tax. I do not think any further leniency is called for in this case because petitioner as a dealer of public sector oil company distributing LPG has the assured margin and tax was separately provided for in the price structure of the goods. Therefore, evasion is not an omission or a mistake, but deliberate. The O.P. is therefore, devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms